IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1349 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARJUN ADARSINGH BARIA

Versus

STATE OF GUJ

Appearance:
MR DEEPAK M SHAH for Appellant
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The present appeal arises out of a judgment and order rendered by the Additional Sessions Judge, Panchmahals at Godhra in Sessions case No.104 of 1993 on November 30th, 1993 convicting the appellant for the offence of murder of Laxmanbhai Dhanabhai and sentencing him to imprisonment for life and imposing a fine of Rs.200/-, in default, S.I. for 15 days.

2. The facts of the case can be stated in brief as under:

2.1 The deceased Laxmanbhai Dhanabhai had gone to attend marriage of a relative at his in-laws' place at village Timbani Muvadi of Godhra Taluka in Panchmahals District. On 4th May, 1993, he alongwith his brother-in-law Vikramsingh alias Tinio Nanusingh went to the Navi Vasahat for having liquor. They went to the house of Gangaben and purchased liquor and consumed the same. Nearby the house of Gangaben was the house of accused Arjun Andhar. They went to the house of the accused and asked for liquor. The accused said that liquor is not available and there was some scuffle between the deceased and the accused. Then Vikramsingh and the deceased left the house of the accused and while returning, witness Vikramsingh noticed that the accused was following them. The accused came from behind and inflicted axe blows on the head and face of the deceased Laxman. As a result, the deceased Laxman fell down. Witness Vikramsingh, therefore, ran away and went to his house. He did not inform anyone about the incident as his cousin's marriage was fixed on the next day. Next day, they went to perform the marriage ceremony at village Vaghasi, near Anand and returned therefrom. On 5th May, 1993 the Sarpanch of the village Pravinsingh Anoopsingh Solanki noticed a dead body in an open field and lodged an F.I.R. in Godhra Taluka Police Station. On the basis of that F.I.R., an offence was registered and investigation started. The police, during the course of investigation, apprehended the accused who volunteered to discover the weapon used in commission of the offence and accordingly, it was discovered in the presence of panch witnesses. A panchnama in this regard was drawn (Exh.25). The police, having ultimately found sufficient evidence, implicated the accused and filed a chargesheet in the Court of Chief Judicial Magistrate, Godhra and the learned Chief Judicial Magistrate, Godhra, after following the procedure, ultimately committed the case to the Court of Sessions.

2.2 The Additional Sessions Judge framed charge at

Exh.2. The accused pleaded not guilty to the charge and claimed to be tried.

2.3 The learned Additional Sessions Judge, after considering the evidence, came to the conclusion that the prosecution had proved the charge against the accused and convicted the accused for offence of murder of deceased Laxmanbhai Dhanabhai.

2.4 Further statement of the accused under Section 313 of the Cr.P.C. was recorded. He denied the case against him and came forward with a defence that the offence was committed by the so-called eye-witness Vikramsingh alias Tinio and that he had been falsely implicated.

3. Aggrieved by the said judgment and order, the convict accused has preferred this appeal.

4. Learned advocate Mr. D.M. Shah appearing for the appellant submitted that if the evidence is seen, it was witness Vikramsingh who was last seen in company of the deceased. As per the evidence of Vikramsingh, he and the deceased had gone to the house of Gangaben for having liquor. Gangaben denies this aspect. Mr. Shah submitted that conduct of this solitary eye-witness also requires to be considered. He claims to be working as a home guard and is aware that drinking liquor and committing murder are offences. Still, he drinks liquor and does not inform police or other authority about the murder of the deceased for three days. This conduct of the witness is unnatural and, therefore, reliance ought not to have been placed on his evidence by the court below. Mr. Shah submitted that the appeal, therefore, may be allowed and conviction may be set aside.

5. The appeal is opposed to by the learned Additional PP Mr. Sheth.

6. We have gone through the record and proceedings and have considered the contentions raised before us in light of the evidence.

7. It is true that the deceased had left in company of witness Vikramsingh lastly and he was seen going thus by other witnesses. But it is equally true that Vikramsingh alias Tinio is a witness who has seen the incident. He clearly deposes about the accused having inflicted axe blows on the head and face of the deceased.

Much is argued about the conduct of this witness being unnatural. It cannot be overlooked that this witness is a rustic villager and different people react to a given set of situation in different manner. There is not even a suggestion to indicate that Vikramsingh and the deceased had any dispute or difference of opinion or any animosity. The plea that is taken in defence in the statement under Section 313 of the Cr.P.C. that this witness committed the murder is not even suggested to this witness. Only because a witness did not react to the incident in a particular manner, it cannot be said that his deposition is not believable. All that can be said is that this evidence would call for a closer scrutiny. Despite a close scrutiny of the evidence, we could not find any material to doubt this witness. More so, when there is evidence of discovery of the weapon by the accused himself. The discovery was made from the house of the accused himself and the report of the Chemical Analyst states that it had blood stains of the same group as that of the deceased. This part could not be explained by the learned advocate for the appellant.

8. In our view, therefore, in the absence of any animosity between Vikramsingh and the deceased, there is no reason to disbelieve the version of this witness. His version gets corroborated by evidence in form of discovery of the weapon. We do not find any reason to interfere with the judgment and order impugned herein. The conviction is rightly recorded and, therefore, the appeal deserves dismissal. The appeal is, therefore, dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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